IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

WP(C).No. 1545 of 2007(H)

PETITIONER:

JERRY MATHEW SAM,
MEMBER, DIVISION NO.1, ELANTHOOR BLOCK PANCHAYAT,
PATHANAMTHITTA.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. THE ELANTHOOR BLOCK PANCHAYAT,
PATHANAMTHITTA, REPRESENTED BY ITS SECRETARY.

2. THE PRESIDENT,
THE ELANTHOOR BLOCK PANCHAYAT, PATHANAMTHITTA.

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,LOCAL SELF GOVERNMENT
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

4. THE ASSISTANT DEVELOPMENT
COMMISSIONER (GI), COLLECTORATE, PATHANAMTHITTA.

R1 & R2 BY ADV. SRI.JACOB P.ALEX
R3 & R4 BY SR. GOVT.PLEADER SRI.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.1545 OF 2007

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DATED THIS THE 7TH FEBRUARY, 2007

JUDGMENT

The member representing Division No.1 of Elanthoor Block Panchayat, owing allegiance to the United Democratic Front has filed this Writ Petition seeking a direction to respondents 1 and 2, viz., the Elanthoor Block Panchayat represented by its Secretary and the President of the Block Panchayat, to reconstitute the number of members to the various Standing Committees, based on Ext.P1 circular and the directions contained in Ext.P3 judgment of this Court. Respondent No.3 is the State and respondent No.4 is the Assistant Development Commissioner (General), Collectorate, Pathanamthitta.

2. It is obligatory under Rule 3 of the Kerala Panchayat Raj Standing Committee Rules, 2000 (hereinafter referred to as "the Rules") that the Panchayat in its first meeting convened after its constitution or re-constitution, after electing the President, shall determine the number of members under Section 162(2) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as "the Act") each Standing Committee shall contain. Under Ext.P5 minutes dated

29.12.2006, the Panchayat resolved to have the number of members to each Standing Committee [Standing Committee (Finance), Standing Committee (Development) and Standing Committee (Welfare)] excluding the President and including the Vice President as Chairman of the Standing Committee for Finance, as 5, 3, 3. The members owing allegiance to the United Democratic Front including the writ petitioner objected on the ground that equality is not maintained. But the Panchayat decided to exclude the President and the Vice President while determining the number of members to be elected to the various standing committees. In the meanwhile, the Government issued Ext.P1 circular which was followed by Ext.P2 notice of the 4th respondent. Ext.P2 notice specifically directs the 1st respondent to regulate the number of members in the Standing Committees only as per Ext.P1 circular. The 2nd respondent-President of the Block Panchayat approached this Court filing W.P.(C)No.30845 of 2005 challenging clause 6 of Ext.P1 circular. That Writ Petition was disposed of by this Court by Ext.P3 judgment.

3. The grounds raised in this Writ Petition and the contentions raised by respondents 1 and 2 all revolve round Ext.P3 judgment by which this Court considered the vires of clause 6 of Ext.P1 circular with

reference to Section 162(2) of the Act. For deciding this case, it will be necessary to go through Ext.P3 judgment in detail, and to appreciate the judgment it will be useful to extract Section 162(2) of the Act which reads as follows:-

> "Every standing committee shall consist of such number of members, including its chairman as decided by the Panchayat, so that all other elected members except the President and Vice President shall be elected as a member in any of the standing committee and the number of members elected to each standing committee shall, as far as possible, be equal."

This Court found that Section 162(2) consists of three parts and noticed that the first limb of the sub-section provides that in reckoning the number of members to be fixed by the Panchayat, it shall include the Vice President also. This Court noticed further that the second part provides that every elected member other than the President and Vice President shall be a member of one of the Standing Committees. Lastly this Court noticed that the sub-section provides that the number of members elected to each Standing Committee shall, as far as possible, be equal. This Court actually agreed with the contention of

the petitioner therein that the provision contemplates equality, as far as possible, in relation to the number of members elected to the Standing Committees and that this number of members elected will not take in the President or the Vice President. Significantly, this Court accepted the contention of the petitioner in that case that the expressions "elected members" and "members elected" are different and that the latter does not include President or the Vice President. After noticing that Section 162(2) provides that equality should be maintained as far as possible among the members elected, this Court reiterated in para.12 of the judgment which is reported in **George Varghese v. State of Kerala** (2006 (4) KLT 452) that in considering equality, the Vice President is outside the zone of consideration. Even though it would appear from Ext.P3 that the Writ Petition has failed and is stated to be dismissed, this Court in Ext.P3 has declared that Clause 6 of Ext.P1 circular is ultra vires Section 162(2) to the extent it directs that it predicates equality even by including the Vice President. Such a declaration is also given in para.14 of the judgment. In fact, considering the situation which actually obtains in the 1st respondent Panchayat, this Court even concluded at para.13 of the judgment that "if the Panchayat had decided to fix the number as 5,3,3 or 4,4,3,

then, applying the last limb of the sub-section, it should be said that the principle of equality as between "members elected" would be satisfied in so far as excluding the chairman, the figure would have been 4,3,3 or 4,3,3 in both illustrations given above".

4. In the present Writ Petition, it is Ext.P5 minutes which is challenged by the petitioners on the ground that the same is violative of the statutory provisions and Ext.P1 circular. Ext.P5 will show that the number of members in the three Standing Committees to the 1st respondent-Block Panchayat is fixed now as follows: 5, 3, 3. The contention of the writ petitioner is that if the number of members is fixed correctly in accordance with Section 162(2) of the Act and Ext.P1 circular, the number of members in the Finance Standing Committee has to be fixed by including the Vice President of the Panchayat. According to him, the Vice President is to be excluded only for arriving at equality in the number of members among the various Standing Committees to the extent possible and the only manner in which parity in numbers can be achieved is to fix the number as 4,4,3 excluding the President and Vice President. Even though the submissions of Sri.V.G.Arun, counsel for the petitioner were emphatic and appealing, I am of the view that those submissions cannot be

accepted so long as Ext.P3 judgment is binding on the parties. As already noticed by me, in para.13 of Ext.P3 judgment, this Court has really concluded that if the Panchayat had decided to fix the number as 5,3,3 or 4,4,3, then, applying the last limb of sub-section (2) of Section 162, it can be said that the principle of equality as between members elected would be satisfied since the figure will be 4,3,3 or 4,3,3 in both the illustrations. I have no difficulty to accept the argument of Mr.Jacob Alex that the present fixation of the number as 5,3,3 is quite correct and in conformity with the statutory provisions and Ext.P1 circular to the extent the same is approved by Ext.P3 judgment. Under Ext.P3 this Court noticed the distinction between the expressions "elected members" and "members elected". This Court held that equality is to be maintained only among the members elected (i.e., except the President and the Vice President). When this Court found that the number can be either 5,3,3 or 4,4,3 and discretion has been given to the Panchayat, I do not think that this Court will be justified in relegating the issue once again to the Panchayat since constitution of Standing Committees cannot be delayed further.

The result of the above discussion is that the interim order dated 12.1.2007 which is being continued till this date will stand vacated and the Writ Petition will stand dismissed.

(PIUS C. KURIAKOSE, JUDGE)

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